

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

| | | |
|--------------|---|-------------------------------|
| LUIS RIVERA, |) |) |
| |) |) |
| Petitioner, |) |) |
| |) |) |
| v. |) | Civil Action No. 04-12717-RCL |
| |) |) |
| DAVID NOLAN, |) |) |
| |) |) |
| Respondent. |) |) |
| |) |) |

**RESPONDENT'S MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS AS TIME-BARRED**

The respondent, David Nolan, hereby submits the following motion to dismiss the petition for writ of habeas corpus filed by the petitioner, Luis Rivera. As grounds for this motion, and as is set forth more fully in the accompanying memorandum of law, the petition must be dismissed as time-barred under 28 U.S.C. § 2244(d), the statute of limitations for federal habeas corpus petitions, which is contained in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). The petitioner’s conviction became final, for purposes of AEDPA, on October 13, 1998, after the United States Supreme Court denied the petitioner’s application for a writ of certiorari. Any petition for a writ of habeas corpus needed, therefore, to be filed in this Court on or before October 13, 1999. The petition was not, however, filed in this Court until December 28, 2004, more than (5) years after the statute of limitations had expired. Accordingly, the petition must be dismissed as time-barred.¹

¹ The respondent’s remaining defenses are not addressed here because the running of the statute of limitations mandates dismissal of the petition. In the event that this Court declines to (continued...)

WHEREFORE, the respondents respectfully request that this Court dismiss this habeas petition on the grounds that it is time-barred.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Maura D. McLaughlin
Maura D. McLaughlin
Assistant Attorney General
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One Ashburton Place
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(617) 727-2200 ext. 2857
BBO No. 634923

Dated: February 1, 2005

Certificate of Service

I hereby certify that on February 1, 2005, I caused a copy of the above document to be served via first class mail, postage prepaid, upon Mr. Luis Rivera, petitioner *pro se*, W-52832, MCI- Cedar Junction, Post Office Box 100, South Walpole, Massachusetts 02071.

/s/ Maura D. McLaughlin
Maura D. McLaughlin

¹(...continued)

dismiss the petition as time-barred, the respondent reserves the right, and requests the opportunity, to file an answer and assert all other applicable defenses, including but not limited to the defense of exhaustion.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I hereby certify that I have, on February 1, 2005, moved this Court for an order dispensing with the requirement to confer under Local Rule 7.1 since the petitioner is currently incarcerated at the Massachusetts Correctional Institute at Cedar Junction and is not represented by counsel, rendering pre-filing conference impracticable.

/s/ Maura D. McLaughlin
Maura D. McLaughlin